

Court No.2

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Misc. Writ Petition No.605 of 2002 (S.B)
(Old No.23108 of 1993)

Jagdish Prasad Sharma
S/o Shri Hari Prasad Sharma,
Assistant Engineer, Minor Irrigation,
Uttarkashi. Petitioner

Versus

1. The Secretary, Rural Development
and Minor Irrigation, Lucknow.
2. The Chief Engineer, Minor Irrigation,
U.P. Lucknow.
3. State of U.P. through Secretary, Rural
Development and Minor Irrigation, Civil
Secretariat, Lucknow.
4. State of Uttaranchal through Secretary,
Irrigation, Civil Secretariat, Dehradun.
..... Respondents

Sri Paresh Tripathi, learned counsel for the petitioner,
Sri S.P.S.Panwar, learned Addl.Chief Standing Counsel for the
respondents/State of U.P.
Learned Standing Counsel for the respondent/State of Uttaranchal.

Date: March 10, 2006

Hon'ble P.C. Verma,J.
Hon'ble B.C.Kandpal,J.

(Delivered by Hon'ble P.C. Verma, J.)

This petition has been filed by the petitioner
seeking the following reliefs :-

- (a) To issue a writ, order or direction in nature
of certiorari quashing the impugned order
dated 20.5.1993, (Annexure No.13)
terminating the services of the petitioner as
Assistant Engineer, Minor Irrigation,
Uttarkashi.

- (b) To issue a writ, order or direction in the nature of mandamus commanding the respondents not to interfere with the petitioner's functioning as Assistant Engineer, Minor Irrigation, Uttarkashi.
- (c) To issue a writ, order or direction in the nature of mandamus commanding the respondents to pay the petitioner's salary and other emoluments due to him for the period of his suspension which was later on revoked under the orders of this Hon'ble Court.
- (d) To issue a writ, order or direction in the nature of mandamus commanding the respondents to appoint fresh Enquiry Officer to look into the charges levelled against the petitioner and conduct the enquiry after affording proper opportunity to him.

2. Brief facts of the case are that the petitioner was selected in U.P. Public Service Commission for the post of Assistant Engineer in the month of September 1984. At the time of filing writ petition the petitioner was posted at Uttarkashi in the Department of Minor Irrigation. While the petitioner was posted as Assistant Engineer in Minor Irrigation, Division- Banda, under the scheme of District Rural Development Agency (D.R.D.A.) various development projects i.e. construction of Tikaria-Amrawati link road, Kore Project, Chilla Chik Dam, Dadaus-Raisin-Chik Dam, Drought Prone Area Programme (D.P.A.P.), Development of Women and

Children of Rural Area Programme (D.W.C.R.A.) and other various works were assigned to the Minor Irrigation Division Banda wherein the petitioner was to supervise the works in the capacity of Assistant Engineer. The District Magistrate was the Chairman while Additional District Magistrate (Projects) was the Secretary of the D.R.D.A. It is alleged in the writ petition that Shri K.M. Pandey, Additional District Magistrate (Projects) /Secretary, D.R.D.A. was demanding exorbitant commission in the aforesaid works from the petitioner against which he moved a complaint to the District Magistrate and other higher authorities on 8.7.1988 but no action whatsoever was taken at their end. After 12 days of the said complaint on 20.7.1988 an F.I.R. was lodged against the petitioner by the aforesaid Additional District Magistrate under Section 409 I.P.C. alleging misappropriation of funds by him in connection with the work of various projects sponsored by the D.R.D.A. The petitioner was granted bail and the matter is still pending decision before the court at Banda. In pursuance of the F.I.R. dated 20.7.1988 the petitioner was put under suspension on 11.8.1988. The suspension was challenged before this Court and the Court by an order dated 01.11.1988 directed the authorities to furnish chargesheet within a period of three months, failure of which the suspension order was to stand revoked. In spite of the Court's order, neither any chargesheet was submitted nor the petitioner was restored to the post after a lapse of three months as a result of which the petitioner had to file contempt petition against the respondents and after about 2 years on 11.1.1990 the suspension order was withdrawn and the petitioner was

restored to the post he was working. On 22.02.1990 the petitioner was served with a chargesheet dated 11.4.1989 requiring him to file his explanation within a period of 15 days or whether in the alternative he desired to seek personal hearing in the matter or examination or cross-examination of witnesses in support of his case. The petitioner submitted his explanation dated 22.3.1991 alleging that the entire proceedings are vitiated inasmuch as it is motivated with malafide reasons at the instance of Shri K.M. Pandey, Additional District Magistrate to whom he could not satisfy by providing exorbitant commission. Thereafter the petitioner was served with a copy of final enquiry report dated 01.5.1992 holding him guilty of the offence committed by him. On 20.5.1993 the services of the petitioner were terminated.

3. In the counter affidavit the respondents stated that the suspension of the petitioner was done on the basis of complaint of the concerned District Magistrate and thereafter he was reinstated in service on 11.1.1990. It is also contended in the counter affidavit that the representation of the petitioner was considered by the Government and it was observed that the petitioner was given full opportunity to produce evidence. The petitioner made the allegations against the Enquiry Officer after completion of the enquiry, hence the request of petitioner to appoint another Enquiry Officer after completion of enquiry was rejected by the Government. It is also denied that petitioner was not afforded any opportunity of hearing.

4. The petitioner also filed rejoinder affidavit reiterating the facts alleged in the writ petition and nothing else.

5. We heard the learned counsel for the parties and perused the record relating to this which was summoned from the department. The main and only one contention of the learned counsel for the petitioner is that he was not afforded with an opportunity to participate in the enquiry and prove his defence before the Enquiry Officer and the impugned order terminating his services was passed on the basis of enquiry report which is against the principles of equity and natural justice.

6. On scrutiny of the file of the writ petition it reveals that the Division Bench of Allahabad High Court on 26.2.1999 required the information in connection with the enquiry against the petitioner from the respondents by way of supplementary counter affidavit. The order passed by the Division Bench dated 26.2.1999 reads as under :-

“List peremptorily on 12th March 1999.

Learned Standing Counsel if so desired may file supplementary counter affidavit clearly stating whether if any enquiry was held, then on what date it was held; whether notice was given to the petitioner about holding of the enquiry and who was the Enquiry Officer, who held the enquiry and other particulars regarding the alleged enquiry and whether the petitioner was given the documents demanded by him, vide Annexure-7 to the writ petition.

7. In compliance of the aforesaid order an affidavit has been filed by Shri J.N. Kushwaha, Chief Engineer, Minor Irrigation Department, U.P., Lucknow on behalf of respondents on 13.9.1999 in which it has been stated that Shri R.S. Jurail, Superintending Engineer was appointed Enquiry Officer on 16.3.1989 in the matter. Chargesheet prepared against the petitioner was given to

the Enquiry Officer and after approval of the Government it was sent to the petitioner on 11.4.1989 through the Additional District Magistrate, Banda. The then Addl. District Magistrate, Banda submitted his report that the petitioner is not available on his given address. At the relevant time the petitioner was attached in the office of District Magistrate, Banda. Since the petitioner was not available in the office of the District Magistrate, Banda, the chargesheet was sent to the petitioner at his home address through registered post. Despite this the petitioner did not turn up. It was got published in Weekly Newspaper 'Akhiri Samay' on 10.5.1989 and also in the Daily Newspaper 'Nav Karmyog Prakash' on 11.5.1989. In the meantime the chargesheet, which was sent through registered post at the home address given by the petitioner, returned back with an endorsement by the postal department that the petitioner is not residing at the address mentioned on the envelope but he is residing at Banda. The respondents again got a notice published for service of the chargesheet on 16.6.1989 but the petitioner again avoided to receive it. Then there was no option but to except to supply the copy of the chargesheet through the Chief Standing Counsel, High Court, Allahabad through this writ petition and ultimately with the marathan efforts, the copy of the chargesheet was got served personally to the petitioner on 05.02.1990. Thereafter the petitioner filed its reply on 22.3.1991 (Annexure No.7 to the writ petition). The petitioner was asked to submit the original records which were under his custody. On 31.7.1991 the petitioner handed over the original records and only then the enquiry was started. The enquiry was conducted on

30.8.1991 and 31.8.1991 and report was submitted. A copy of the enquiry report was given to the petitioner on 01.05.1992 and he was informed that in case he has to say anything with regard to the enquiry report, he could do so within a period of 14 days from the date of receipt of the letter.

8. It is also stated in the said supplementary counter affidavit that notice was given to the petitioner and he replied the same. The papers required by the petitioner were furnished to him. So far as the documents demanded by the petitioner is concerned. Since the documents were not possible to be handed over to the petitioner as demanded by him, therefore he was informed to peruse the records in the office of the Enquiry Officer in presence of a responsible officer but the petitioner did not do so.

9. We have also gone through the record of the enquiry. Letter NO.3029/54-2-1910(1)/88, dated 15th Sept.,1992 addressed by Sri Rajeev Yadav, Special Secretary, U.P. Shasan to Sri R.S.Jurail, Superintending Engineer/Enquiry Officer, Minor Irrigation, Circle Meerut reveals that explanation was obtained from the petitioner on the enquiry report. In the explanation submitted by the petitioner, he raised various points and expressed his disagreement with the enquiry report. The Government required from the inquiry officer to sent his report within 15 days on the points raised by the petitioner. The Enquiry Officer sent his report to the Government through letter No.825/M.I/92-93, dated 30th Sept.,1992 stating therein that in the month of November 1990 the delinquent officer has inspected the record himself in the office of Additional District Magistrate, Banda. Some of

the original records the petitioner was having with him and some he got reconstructed at his own level. The Enquiry Officer also stated in the aforesaid letter that the petitioner on several times met with him at Jhansi, Mathura and Agra relating to the enquiry and on 01.8.1991 he came with record at Circle office Jhansi and also put up his defence before him.

10. From the perusal of the record it is clear that the petitioner never came with clean hand before the Enquiry Officer. The manner by which the petitioner was served with the chargesheet proved this fact. Keeping in view the facts and circumstances of the case it cannot be said that the petitioner was not afforded opportunity of hearing and he was not furnished the required documents. The enquiry was conducted according to rules and the petitioner was found guilty of some of the charges levelled against him, which are of grievous in nature. Thereafter the punishment order was passed after completing necessary formalities according to rules. Therefore, the impugned order does not require any interference by this Court under Article 226 of the Constitution of India.

11. The writ petition has no force and is dismissed. No order as to costs.

(B.C.Kandpal,J.)

(P.C. Verma, J.)

Date: March 10, 2006

P.Singh